

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

PATRICIA CHAVEZ,

Plaintiff,

vs.

No. 1:15-cv-01138-SCY-WPL

FINANCIAL RECOVERY SERVICES, Inc.,  
and LVNV FUNDING, LLC,

Defendants.

**DEFENDANT LVNV FUNDING, LLC'S ANSWER TO COMPLAINT**

Defendant LVNV Funding, LLC ("Defendant"), by and through its attorneys, Keleher & McLeod, P.A. (Arthur O. Beach and Benjamin F. Feuchter), hereby answers the Complaint ("Complaint") of Plaintiff Patricia Chavez ("Plaintiff") as follows:

**NATURE OF ACTION**

1. Answering Paragraph 1 of the Complaint, Defendant admits only that Plaintiff purports to allege violations of the Fair Debt Collection Practices Act, codified at 15 U.S.C. § 1692, *et seq.* ("FDCPA"). Defendant denies violating the FDCPA, and further denies Plaintiff's allegations to the extent they misstate the law.

**JURISIDCTION AND VENUE**

2. Answering Paragraph 2 of the Complaint, these allegations consist of legal conclusions to which no response is required. To the extent a response is required, Defendant denies these allegations to the extent they misstate the law.

3. Answering Paragraph 3 of the Complaint, these allegations consist of legal conclusions to which no response is required. To the extent a response is required, Defendant is

without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

### **PARTIES**

4. Answering Paragraph 4 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

5. Answering Paragraph 5 of the Complaint, these allegations consist of legal conclusions to which no response is required. To the extent a response is required, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

6. Answering Paragraph 6 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

7. Answering Paragraph 7 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

8. Answering Paragraph 8 of the Complaint, Defendant admits that it acquires certain credit card accounts from third-parties. Except as stated, Defendant denies these allegations.

9. Answering Paragraph 9 of the Complaint, Defendant denies these allegations.

### **FACTUAL ALLEGATIONS**

10. Answering Paragraph 10 of the Complaint, Defendant admits that Plaintiff is obligated to pay the subject account.

11. Answering Paragraph 11 of the Complaint, Defendant admits that the subject account was originated by Capital One. Except as stated, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

12. Answering Paragraph 12 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

13. Answering Paragraph 13 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

14. Answering Paragraph 14 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

15. Answering Paragraph 15 of the Complaint, Defendant admits that the subject account was placed with Financial Recovery Services, Inc. for collection.

16. Answering Paragraph 16 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

17. Answering Paragraph 17 of the Complaint, the document attached to the Complaint as Exhibit A speaks for itself. As a further response, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

18. Answering Paragraph 18 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

19. Answering Paragraph 19 of the Complaint, the document attached to the Complaint as Exhibit A speaks for itself.

20. Answering Paragraph 20 of the Complaint, the document attached to the Complaint as Exhibit A speaks for itself.

21. Answering Paragraph 21 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

22. Answering Paragraph 22 of the Complaint, the document attached to the Complaint as Exhibit B speaks for itself. As a further response, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

23. Answering Paragraph 23 of the Complaint, the document attached to the Complaint as Exhibit B speaks for itself.

24. Answering Paragraph 24 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

25. Answering Paragraph 25 of the Complaint, the documents attached to the Complaint as Exhibits C, D and E speak for themselves. As a further response, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

26. Answering Paragraph 26 of the Complaint, the documents attached to the Complaint as Exhibits C, D and E speak for themselves.

27. Answering Paragraph 27 of the Complaint, the documents attached to the Complaint as Exhibits A, B, C, D and E speak for themselves.

28. Answering Paragraph 28 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

29. Answering Paragraph 29 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

30. Answering Paragraph 30 of the Complaint, these allegations consist of legal conclusions to which no response is required. To the extent a response is required, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

31. Answering Paragraph 31 of the Complaint, Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations, and on that basis, denies them.

32. Answering Paragraph 32 of the Complaint, Defendant denies these allegations.

33. Answering Paragraph 33 of the Complaint, Defendant denies these allegations.

34. Answering Paragraph 34 of the Complaint, Defendant denies these allegations.

35. Answering Paragraph 35 of the Complaint, the documents attached to the Complaint as Exhibits A, B, C, D and E speak for themselves.

36. Answering Paragraph 36 of the Complaint, Defendant denies these allegations.

**COUNT 1**  
**VIOLATION OF 15 U.S.C. § 1692e**  
**FRC**

37. Answering Paragraph 37 of the Complaint, Defendant incorporates by reference its responses to the previous paragraphs as though fully set forth herein.

38. Answering Paragraph 38 of the Complaint, these allegations are not made against LVNV, and thus, LVNV is not required to provide a response. To the extent a response is required, Defendant denies these allegations to the extent they misstate the law.

39. Answering Paragraph 39 of the Complaint, these allegations are not made against LVNV, and thus, LVNV is not required to provide a response. To the extent a response is required, Defendant denies these allegations.

40. Answering Paragraph 40 of the Complaint, these allegations are not made against LVNV, and thus, LVNV is not required to provide a response. To the extent a response is required, Defendant denies these allegations

41. Answering Paragraph 41 of the Complaint, these allegations are not made against LVNV, and thus, LVNV is not required to provide a response. To the extent a response is required, Defendant denies these allegations

**COUNT II**  
**VIOLATION OF 15 U.S.C. § 1692e**  
**LVNV**

42. Answering Paragraph 42 of the Complaint, Defendant incorporates by reference its responses to the previous paragraphs as though fully set forth herein.

43. Answering Paragraph 43 of the Complaint, Defendant denies these allegations.

44. Answering Paragraph 44 of the Complaint, Defendant denies these allegations.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

45. Plaintiff fails to state a claim upon which relief can be granted against Defendant.

**SECOND AFFIRMATIVE DEFENSE**

46. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

**THIRD AFFIRMATIVE DEFENSE**

47. Plaintiff is barred from obtaining the relief sought in the Complaint by the doctrines of estoppel, waiver, unclean hands, laches, or other equitable doctrines.

**FOURTH AFFIRMATIVE DEFENSE**

48. Plaintiff's claims are barred in whole or in part because Plaintiff has failed to mitigate her alleged damages, if any.

**FIFTH AFFIRMATIVE DEFENSE**

49. Defendant expressly reserves any defenses that may be available to it under any applicable laws of other jurisdictions, in accordance with applicable choice of law rules.

**SIXTH AFFIRMATIVE DEFENSE**

50. Plaintiff's claims are barred in whole or in part because Plaintiff consented to, ratified, or acquiesced in all of the alleged acts or omissions alleged.

**SEVENTH AFFIRMATIVE DEFENSE**

51. Defendant's conduct was privileged or justified.

**EIGHTH AFFIRMATIVE DEFENSE**

52. Plaintiff has waived any and all claims, rights and demands made in the Complaint.

**NINTH AFFIRMATIVE DEFENSE**

53. Plaintiff's claims may be barred because any alleged acts or omissions of Defendant giving rise to Plaintiff's claims, if any, were the result of an innocent mistake and/or bona fide error notwithstanding reasonable procedures implemented by Defendant to avoid any such acts or omissions. Defendant at all times acted in a reasonable manner in connection with the transactions at issue in this action.

**TENTH AFFIRMATIVE DEFENSE**

54. Plaintiff's claims may be barred because the acts or omissions of which Plaintiff complains have been approved or mandated, implicitly or expressly, by applicable statutes and regulations.

**ELEVENTH AFFIRMATIVE DEFENSE**

55. Plaintiff's claims may be barred because Defendant at all times complied in good faith with all applicable statutes and regulations.

**TWELFTH AFFIRMATIVE DEFENSE**

56. Defendant specifically denies that it acted with any willfulness, oppression, fraud or malice towards Plaintiff.

**THIRTEENTH AFFIRMATIVE DEFENSE**

57. Any harm alleged in the Complaint can be attributed to several causes, and the damages for this harm, if any, should be apportioned among the various causes according to the contribution of each cause to the harm sustained.

**FOURTEENTH AFFIRMATIVE DEFENSE**

58. If Plaintiff suffered or sustained any loss, injury, damage or detriment, it was directly and proximately caused and contributed to by the breach, conduct, acts, omissions,



activities, carelessness, recklessness, negligence, or intentional misconduct of others, and not by Defendant.

**FIFTEENTH AFFIRMATIVE DEFENSE**

59. If Plaintiff suffered or sustained any loss, injury, damage or detriment, it was directly and proximately caused and contributed to by the intervening acts of others, and not by Defendant.

**SIXTEENTH AFFIRMATIVE DEFENSE**

60. If Plaintiff prevails against Defendant, Defendant's liability is several and limited to their own actionable segment of fault, if any.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

61. Defendant is entitled to a set-off against any award to Plaintiff.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

62. Defendant specifically gives notice that it intends to rely upon such other defenses as may become available by law, or pursuant to statute, or during any further discovery proceedings of this case, and hereby reserve the right to amend its Answer and assert such defenses.

WHEREFORE, Defendant prays for judgment as follows:

1. That Plaintiff take nothing by reason of the Complaint;
2. For its costs of suit herein;
3. For attorney's fees to the extent available by law or contract; and
4. For such other and further relief as this Court may deem just and proper.

Respectfully submitted,

KELEHER & McLEOD, P.A.

By /s/ Benjamin F. Feuchter  
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Benjamin F. Feuchter  
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*Attorneys for Defendant LVNV  
Funding, LLC*

I hereby certify that on February 1, 2016, I served a copy of the foregoing on all parties of record through the Court's electronic filing system.

/s/ Benjamin F. Feuchter  
Benjamin F. Feuchter